

HERBERT E. PAULMAN,
Plaintiff,

vs.

NANCY A. BERRYHILL,
Acting Commissioner of Social
Security Administration,
Defendant.

THIS MATTER is before the Court on Plaintiff’s “Motion for Summary Judgment” (document #10) and Defendant’s “Motion for Summary Judgment” (document #12), as well as the parties’ briefs and exhibits.

The parties have consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and these Motions are ripe for disposition.

Having considered the written arguments, administrative record, and applicable authority, the Court finds that Defendant's decision to deny Plaintiff Social Security benefits is supported by substantial evidence. Accordingly, the Court will deny Plaintiff's Motion for Summary Judgment; grant Defendant's Motion for Summary Judgment; and affirm the Commissioner's decision.

The Court adopts the procedural history as stated in the parties' briefs.

Plaintiff filed the present action on January 14, 2017. He assigns error to the Administrative Law Judge (ALJ)'s formulation of his mental Residual Functional Capacity

(“RFC”).¹ See Plaintiff’s “Memorandum ...” at 3 (document #11). Specifically, Plaintiff argues that the ALJ erred by not accounting for his mental limitations resulting from ADHD as found by consultative examiner Dr. Aimee Henley, and his mild difficulty in concentration, persistence or pace. Plaintiff also challenges the ALJ’s failure to include his work history in her evaluation of his credibility.

II. STANDARD OF REVIEW

The Social Security Act, 42 U.S.C. § 405(g) and § 1383(c)(3), limits this Court’s review of a final decision of the Commissioner to: (1) whether substantial evidence supports the Commissioner’s decision, Richardson v. Perales, 402 U.S. 389, 390, 401 (1971); and (2) whether the Commissioner applied the correct legal standards. Hays v. Sullivan, 907 F.2d 1453, 1456 (4th Cir. 1990); see also Hunter v. Sullivan, 993 F.2d 31, 34 (4th Cir. 1992) (*per curiam*). The District Court does not review a final decision of the Commissioner *de novo*. Smith v. Schweiker, 795 F.2d 343, 345 (4th Cir. 1986); King v. Califano, 599 F.2d 597, 599 (4th Cir. 1979); Blalock v. Richardson, 483 F.2d 773, 775 (4th Cir. 1972).

As the Social Security Act provides, “[t]he findings of the [Commissioner] as to any fact, if supported by substantial evidence, shall be conclusive.” 42 U.S.C. § 405(g). In Smith v. Heckler, 782 F.2d 1176, 1179 (4th Cir. 1986), quoting Richardson v. Perales, 402 U.S. 389, 401 (1971), the Fourth Circuit defined “substantial evidence” thus:

Substantial evidence has been defined as being “more than a scintilla and do[ing]

¹The Social Security Regulations define “Residual Functional Capacity” as “what [a claimant] can still do despite his limitations.” 20 C.F.R. § 404.1545(a). The Commissioner is required to “first assess the nature and extent of [the claimant’s] physical limitations and then determine [the claimant’s] Residual Functional Capacity for work activity on a regular and continuing basis.” 20 C.F.R. § 404.1545(b).

more than creat[ing] a suspicion of the existence of a fact to be established. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”

See also Seacrist v. Weinberger, 538 F.2d 1054, 1056-57 (4th Cir. 1976) (“We note that it is the responsibility of the [Commissioner] and not the courts to reconcile inconsistencies in the medical evidence”).

The Fourth Circuit has long emphasized that it is not for a reviewing court to weigh the evidence again, nor to substitute its judgment for that of the Commissioner, assuming the Commissioner’s final decision is supported by substantial evidence. Hays v. Sullivan, 907 F.2d at 1456 (4th Cir. 1990); see also Smith v. Schweiker, 795 F.2d at 345; and Blalock v. Richardson, 483 F.2d at 775. Indeed, this is true even if the reviewing court disagrees with the outcome – so long as there is “substantial evidence” in the record to support the final decision below. Lester v. Schweiker, 683 F.2d 838, 841 (4th Cir. 1982).

III. DISCUSSION OF CLAIM

The question before the ALJ was whether Plaintiff became “disabled” as that term is defined for Social Security purposes² prior to his date last insured of March 31, 2017.

Plaintiff first assigns error to the ALJ’s evaluation of Dr. Aimee Henley’s consultative psychological opinion. The ALJ thoroughly summarized Dr. Henley’s clinical findings and

²Under the Social Security Act, 42 U.S.C. § 301, et seq., the term “disability” is defined as an:

inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months

Pass v. Chater, 65 F. 3d 1200, 1203 (4th Cir. 1995).

opinions, noting that Dr. Henley's assessment that Plaintiff suffered mild to moderate limitations relied, in part, on Plaintiff's self-reported diagnosis. (Tr. 15-16). In assigning little weight to Dr. Henley's opinion, the ALJ explained that her findings were not supported by Plaintiff's past work, his attention and concentration during his evaluation, and the lack of diagnosis or treatment during the relevant period. (Tr. 15-16). The ALJ properly considered the supportability of the opinion and its consistency with the record as a whole. See 20 C.F.R. § 404.1527(c)(3)-(4).

Plaintiff next challenges the ALJ's formulation of his mental RFC. The ALJ is solely responsible for assessing a claimant's RFC. 20 C.F.R. §§ 404.1546(c) & 416.946(c). In making that assessment, the ALJ must consider the functional limitations resulting from the claimant's medically determinable impairments. SSR96-8p at *2. However, it is the claimant's burden to establish his RFC by demonstrating how those impairments impact his functioning. See 20 C.F.R. §§404.1512(c) & 416.912(c); see also, e.g., Stormo v. Barnhart, 377 F.3d 801, 806 (8th Cir. 2004) ("[t]he burden of persuasion . . . to demonstrate RFC remains on the claimant, even when the burden of production shifts to the Commissioner at step five"); Plummer v. Astrue, No. 5:11-cv-00006, 2011 WL 7938431, at *5 (W.D.N.C. Sept. 26, 2011) (Memorandum and Recommendation) ("[t]he claimant bears the burden of providing evidence establishing the degree to which her impairments limit her RFC") (citing Stormo), adopted, 2012 WL 1858844 (May 22, 2102), aff'd, 487 F. App'x 795 (4th Cir. Nov. 6, 2012).

The Fourth Circuit has held that "remand may be appropriate . . . where an ALJ fails to assess a claimant's capacity to perform relevant functions, despite contradictory evidence in the record, or where other inadequacies in the ALJ's analysis frustrate meaningful review." Mascio v. Colvin, 780 F.3d 632, 636 (4th Cir. 2015) (quoting Cichocki v. Astrue, 729 F.3d 172, 177 (2d Cir.

2013). This explicit function-by-function analysis is not necessary when functions are irrelevant or uncontested. It is only after that function-by-function analysis has been completed that RFC may "be expressed in terms of the exertional levels of work, sedentary, light, medium, heavy, and very heavy." Id.

After thoroughly discussing the medical record, the ALJ explained that Plaintiff had only a mild limitation in concentration, persistence or pace. (Tr. 15-16). The ALJ also explained that this mild limitation did not interfere with Plaintiff's ability to perform his past relevant work as a technical writer and electronics technician. (Tr. 15-16, 21).

The ALJ's RFC determination is supported by Plaintiff's testimony, medical records and treatment history. To the extent that Plaintiff is challenging the ALJ's credibility determination, the Court finds that the ALJ applied the correct legal standard and her credibility determination is supported by substantial evidence. The regulations do not require an evaluation of Plaintiff's work history in a credibility analysis. See 20 C.F.R. § 404.1529. Moreover, substantial evidence supported the ALJ's conclusion that Plaintiff's symptoms were not as disabling as alleged. Plaintiff was not taking any medication or undergoing treatment for his ADHD or alleged anxiety symptoms. (Tr. 15-16, 387). In fact, he reported to Dr. Henley that he and his doctor chose not to add medication for his ADHD and that he was capable of coping with his social anxiety symptoms without any treatment. (Tr. 387).

Although the medical records establish that Plaintiff experienced pain and mental and emotional difficulties to some extent, as the Fourth Circuit has noted, it is the ALJ's responsibility, not the Court's, "to reconcile inconsistencies in the medical evidence." Seacrist, 538 F.2d at 1056-57. Substantial evidence exists to support the ALJ's assessment of the medical records,

Plaintiff's credibility, and her ultimate determination that Plaintiff was not disabled.

IV. ORDER

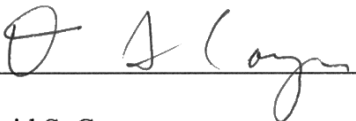
NOW THEREFORE, IT IS ORDERED:

1. Plaintiff's "Motion For Summary Judgment" (document #10) is **DENIED**; Defendant's "Motion for Summary Judgment" (document #12) is **GRANTED**; and the Commissioner's decision is **AFFIRMED**.

2. The Clerk is directed to send copies of this Memorandum and Order to counsel for the parties.

SO ORDERED.

Signed: April 3, 2018



David S. Cayer
United States Magistrate Judge

